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**§12-15-90. [MH] Authority and procedure.**

~~Such~~ The petition shall be verified and filed in the county in which ~~such minor or the~~ child is located or resides, petitioning the court to commit ~~such minor or the~~ child to the custody of the State Department of Mental Health and Mental Retardation.

If it appears from the face of the petition or from the testimony of the petitioner that the petition is totally without merit, the court may order the petition dismissed without further proceedings.

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2 (d)(1) When any child ~~or minor~~ against whom a petition has been filed seeking to commit  
3 ~~such the~~ child ~~or minor~~ to the custody of the State Department of Mental Health and Mental  
4 Retardation is initially brought before the court, the court shall read the petition to ~~such minor or~~  
5 the child and to his or her parents, guardian, and counsel, and inform ~~such those~~ persons orally  
6 and in writing of the date, time, and place of the next hearing to be held in regard to ~~such minor~~  
7 ~~or the~~ child, the purpose of ~~such the~~ hearing, the rights of ~~such the~~ child ~~or minor~~ at ~~such the~~  
8 hearing, and the possible consequences of ~~such the~~ hearing.

9 (2) The court shall ascertain the need for and ability to pay for an attorney to represent the  
10 ~~minor or~~ child and shall appoint an attorney or guardian ad litem as in other juvenile court  
11 proceedings ~~under this chapter~~. No statement made or act done by ~~such minor or the~~ child in the  
12 presence of the court prior to ~~such minor or the~~ child obtaining the services of an attorney, by  
13 appointment or otherwise, shall be considered by the court in determining if ~~such minor or the~~  
14 child should be committed to the custody of the State Department ~~of Mental Health and Mental~~  
15 Retardation.

16 (3) Notice of the filing of a petition ~~under~~ pursuant to this section and of the date of final  
17 hearing shall be given to the State Department ~~of Mental Health and Mental Retardation~~ as  
18 provided by rules of court promulgated by the s Supreme eCourt of Alabama. ~~Said The~~ notice  
19 shall constitute an application for admission to a facility maintained, operated, or under the  
20 supervision and control of the Department ~~of Mental Health and Mental Retardation~~.

21 Not less than 24 hours prior to the final hearing, ~~said mental health department the~~  
22 Department shall notify the ~~district~~ court whether adequate facilities are available for the ~~minor~~  
23 ~~or~~ child and to which facility the ~~minor or~~ child should be sent if the ~~district~~ judge should  
24 determine that ~~such minor or the~~ child is to be committed. ~~No person The child~~ shall not be

1 accepted if the facility does not have adequate facilities available or if acceptance of the child  
2 would result in an overcrowded condition.

3 (e) At such time as a ~~minor or~~ child sought to be committed is first brought before the court,  
4 the court shall determine the placement of the child ~~what limitations, if any, shall be placed upon~~  
5 ~~such minor or child's liberty~~ pending further hearings. No limitations shall be placed upon ~~such~~  
6 the child ~~minor or child's liberty~~ unless ~~such~~ limitations are necessary to prevent ~~such minor or~~  
7 the child from doing substantial harm to ~~him~~self or to others or to prevent ~~such minor or~~ the child  
8 from leaving the jurisdiction of the court.

9 No ~~such minor or~~ child shall be placed in a juvenile detention facility ~~or jail or other facility~~  
10 ~~for persons accused of or convicted of committing crimes~~ unless ~~such minor or~~ the child is  
11 charged with a delinquent act. However, the court may order the child to be held in a public or  
12 private facility pending receipt by the State Department of Mental Health and Mental  
13 Retardation poses a real and present threat of harm to himself or others and no other facility is  
14 available to safely detain such minor or child.

15 The court shall order ~~such minor or~~ the child to appear at the times and places set for hearing  
16 the petition and may order and require the ~~minor or~~ child to appear at designated times and  
17 places to be examined by medical doctors or mental health professionals.

18 (f) If the ~~district~~ court ~~shall~~ finds it necessary to temporarily confine or restrain ~~any minor or~~  
19 child, pending final hearing upon a petition for mental commitment of a child, in to the custody  
20 of any person, department, or persons or agency other than his or her parent or parents or legal  
21 guardian, the court at the time such ~~restraint or~~ confinement is ordered shall set the matter  
22 ~~petition~~ for a hearing within seven days to determine if probable cause exists that ~~such minor or~~  
23 the child should be committed. At such probable cause hearing, the court shall determine if it is  
24 necessary to continue the restraint or confinement pending the final hearing.

1        Upon a finding of probable cause that ~~such minor or~~ the child should be committed, the court  
2        shall enter an order so stating and setting the date, time, and place of the hearing on the merits of  
3        ~~such~~ the petition.

4        The final hearing shall be held on the merits of ~~such~~ the petition within 30 days of the date  
5        that ~~such minor or~~ the child was served with a copy of the petition seeking to commit ~~such minor~~  
6        ~~or~~ the child.

7        (g) At all hearings conducted ~~pursuant to this section in relation to a petition to~~ commit ~~any~~  
8        ~~minor or~~ child to the custody of the State Department of Mental Health and Mental Retardation,  
9        the following ~~rules~~ shall apply:

11        (1) The ~~minor or~~ child sought to be committed shall be present, unless, prior to the hearing,  
12        the attorney for such ~~minor or~~ child has filed in writing a waiver of the presence of ~~such minor or~~  
13        the child on the ground that the presence of ~~such minor or~~ the child would be dangerous to ~~such~~  
14        ~~person's~~ his or her physical or mental health or that ~~such minor or child's~~ conduct of the child  
15        could reasonably be expected to prevent the hearing from being held in an orderly manner and  
16        the court has determined from the evidence that the waiver should be granted and has entered an  
17        order approving the waiver.

18        (2) The ~~minor or~~ child sought to be committed shall have the right to compel the attendance  
19        of and offer the testimony of witnesses, to be confronted with the witnesses in support of the  
20        petition and to cross-examine ~~them~~ those witnesses, and to testify in his or her own behalf, ~~but~~  
21        ~~no such minor or~~ . No child shall be compelled to testify against himself or herself.

22        (3) The court shall cause the hearing to be recorded stenographically, mechanically, or  
23        electronically and shall retain ~~such~~ the recording for a period of not less than three years from the

1 date the petition is denied or granted, and not less than the duration of any commitment pursuant  
2 to ~~such~~ the hearing.

3 (4) All hearings shall be heard by the court without a jury, and the persons who may be  
4 present shall be as provided for in [subsection (a) of Section 12-15-65].

5 (h) An attorney representing ~~the a state, any or county~~ department or agency, or municipality  
6 ~~or the Department of Youth Services or the Department of Human Resources~~ or an attorney  
7 representing the person or persons filing a petition to have a ~~minor or~~ child committed, may  
8 serve as the advocate in support of the petition to commit in all matters ~~in regard to a~~ regarding  
9 the petition ~~to commit~~.

10 (i) At the final hearing upon a petition seeking to commit a ~~minor or~~ child to the custody of  
11 the State Department of Mental Health and Mental Retardation on the basis that ~~he~~ the child is  
12 mentally ill, the court may grant the petition if substantial evidence proves ~~that~~ all of the  
13 following:

14 (1) ~~The minor or~~ That the child sought to be committed is mentally ill; ~~and~~ ,

15 (2) ~~As That, as~~ a consequence of the mental illness, the ~~minor or~~ child poses a real and  
16 present threat of substantial harm to himself, herself, or to others; ~~and~~ ,

17 (3) ~~The~~ That the threat of substantial harm has been evidenced by a recent overt act; ~~and~~ ,

18 (4) ~~Treatment~~ That treatment is available for the ~~minor's or child's~~ mental illness of the  
19 child or that confinement is necessary to prevent the ~~minor or~~ child from causing substantial  
20 harm to himself, herself, or to others; ~~and~~ ,

21 (5) ~~Commitment~~ That commitment is the least restricting alternative necessary and  
22 available for treatment of the ~~minor's or child's~~ illness of the child. Upon such findings, the  
23 court shall enter an order setting forth the findings and may order the ~~person~~ child committed  
24 to the custody of the ~~State Department of Mental Health and Mental Retardation~~.

(j) At the final hearing upon a petition seeking to commit a ~~minor or~~ child to the State Department of Mental Health and Mental Retardation on the basis that ~~he~~ the child is mentally retarded, the court may grant the petition if substantial evidence proves ~~that~~ all of the following:

(1) The ~~minor or~~ child sought to be committed is mentally retarded; ~~and~~ ,

(2) The ~~said~~ mentally retarded ~~minor or~~ child is not borderline or mildly retarded, as defined by the department. ~~For the purposes of making this determination, the following definitions shall apply:~~

~~A borderline retarded person is an individual who is functioning between one and two standard deviations below the mean, and the mildly retarded person is an individual who is functioning between two and three standard deviations below the mean on a standardized intelligence test such as the Stanford Binet scale and on measures of adaptive behavior such as the American Adaptive Behavior scale; and~~

(3) The ~~minor or~~ child, if allowed to remain in the community, is likely to cause serious injury to himself, herself, or others, or that adequate care, rehabilitation and training opportunities are available only at a facility provided by the department ~~of mental health and mental retardation~~.

Upon such findings, the court shall enter an order setting forth the findings, and may order the ~~minor or~~ child committed to the custody of the ~~State D~~ department of Mental Health and Mental Retardation.

(k) Any ~~minor or~~ child committed to the custody of the State Department of Mental Health and Mental Retardation who, ~~in the judgment of the Commissioner of Mental Health and Mental Retardation~~, has gained maximum benefit from institutional treatment, ~~or~~ is no longer in need of the services of the ~~D~~ department of Mental Health and Mental Retardation or has gained maximum benefit from the programs of the ~~D~~ department of

1       ~~Mental Health and Mental Retardation~~ shall may be discharged from the custody of the  
2       ~~D~~department ~~of Mental Health and Mental Retardation~~ and The child shall not be  
3       received again by the ~~D~~department ~~of Mental Health and Mental Retardation~~ under  
4       pursuant to the original commitment order unless deemed appropriate by a court of  
5       proper jurisdiction holding a subsequent hearing.

6       (l) The Department ~~of Mental Health and Mental Retardation~~ shall notify the committing  
7       court or the court to which the case is transferred and the parties to the commitment  
8       action in writing at least ~~40~~ 30 days in advance of the ~~release~~ discharge. The committing  
9       court, at the time of ~~release~~ discharge, shall ~~then invest~~ transfer custody ~~in a party to a~~  
10      person or state department or agency which the court deems suitable.

11      (m) The court committing any ~~minor or~~ child to the custody of the ~~State D~~ department ~~of~~  
12      ~~Mental Health and Mental Retardation~~ shall retain jurisdiction over ~~such minor or~~ the child  
13      ~~concurrently with the district court of the county in which the minor or child is subsequently~~  
14      ~~located for so long as the minor or child is in the custody of the Department of Mental Health~~  
15      ~~and Mental Retardation.~~ Following commitment of the child to the department, the committing  
16      court may order that the case be transferred to the court of the child's residence for terms and  
17      conditions of release. A copy of the order of transfer shall be provided to the department.

18      (n) The probable cause hearing provided in §12-15-90(f) and the final hearing provided in  
19      §12-15-90(g) may be consolidated with the consent of all the parties.